

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**INEZ ROWLAND**

Claimant

VS.

**PRESBYTERIAN MANORS**

Respondent

Self-Insured

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Docket No. 177,606

**ORDER**

On the 6th day of April, 1995, the application of the claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge George R. Robertson dated January 5, 1995, came regularly on for oral argument in Wichita, Kansas.

**APPEARANCES**

Claimant appeared by and through her attorney Timothy J. King of Wichita, Kansas. The respondent, a qualified self-insured, appeared by and through its attorney Ross A. Hollander of Wichita, Kansas. There were no other appearances.

**RECORD**

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

**STIPULATIONS**

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

- (1) Whether claimant suffered personal injury by accident arising out of and in the course of her employment on the dates alleged;
- (2) Whether claimant suffered a series of accidents or a single traumatic event; and

- (3) Whether claimant submitted timely written claim pursuant to K.S.A. 44-520a.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The claimant appealed only the issue dealing with whether claimant had submitted a timely written claim pursuant to K.S.A. 44-520a. In the Award, the Administrative Law Judge also decided the disputed issues of whether claimant suffered a series of accidents versus a single traumatic event and whether claimant suffered personal injury by accident arising out of and in the course of her employment for the injuries for which claimant sought benefits.

In order for the claimant to be awarded benefits in this matter, claimant must receive a favorable decision by the Appeals Board in all of the above issues.

Claimant, a housekeeper and laundry aide for the respondent for sixteen (16) years, was injured on January 16, 1991 while walking across the street. She was approaching the respondent's business in the parking lot when she slipped and fell, striking her right knee. Claimant sought medical treatment with a company physician, Dr. Glover. Claimant did not again seek medical care until February 1992, some thirteen (13) months after the date of accident. Dr. Glover testified that claimant's condition in February 1992 would not be related to any injuries suffered in January 1991.

The Administrative Law Judge found claimant suffered a single traumatic event on January 16, 1991. Claimant's allegation of an aggravation each and every working day after that date is not supported by the evidence in the record. The Appeals Board finds the Administrative Law Judge's decision on this issue to be supported by the testimony and the medical evidence and adopts same.

The Administrative Law Judge went on to find that the evidence in the file supports an injury in January 1991 with any conditions suffered by claimant in March 1993 to be unrelated to claimant's condition in 1991. This finding that the condition for which claimant seeks benefits did not arise out of and in the course of her employment is well supported by the weight of the credible evidence and the Appeals Board adopts same.

The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" the employment if it arises out of the nature, conditions, obligations and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "in the course" of employment relates to the time, place and circumstances under which the accident occurred. That means the injury happened while the workman was at work in his employer's service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 689 P.2d 837 (1984).

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends. K.S.A. 44-501(a).

"'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such a party's position on an issue is more probably true than not true" on the basis of the record. K.S.A. 44-508(g).

This burden must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

The Administrative Law Judge, in finding that the condition for which claimant sought benefits did not come about as the result of an accidental injury arising out of and in the course of claimant's employment, denied claimant benefits both in terms of compensation and medical treatment. The Appeals Board, after reviewing the record, finds that the denial of benefits to claimant is supported by the weight of the credible evidence in the record as claimant's condition for which she seeks benefits did not result from an accidental injury arising out of and in the course of her employment with the respondent. In so finding, the issue of timely written claim is rendered moot.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson denying claimant compensation against the respondent in his Award of January 5, 1995, should be, and is hereby, affirmed.

The fees necessary to defray the administration of the Workers Compensation Act are hereby assessed against the respondent, to be paid as follows:

Owens, Brake & Associates	
Preliminary Hearing Transcript	\$151.00
dated October 12, 1993	
Regular Hearing Transcript	\$176.27
dated September 8, 1994	
	Total \$327.27
Barbara J. Terrell & Associates	
Deposition of Mary Muncy	\$ 81.50
dated January 24, 1994	
Deposition of Dr. Kenneth Jansson	\$ 71.50
dated May 16, 1994	
	Total \$153.00
Kelley, York & Associates	
Deposition of Dr. Richard Glover	\$147.60
dated June 8, 1994	
Deposition of Phil Palmer	\$ 91.60
dated October 19, 1994	
	Total \$239.20

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Timothy J. King, Wichita, Kansas  
Ross A. Hollander, Wichita, Kansas  
Geroge R. Robertson, Administrative Law Judge  
George Gomez, Director